

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHARLES M. MCCARTHY JR.,)	
)	
Plaintiff(s),)	No. C05-4834 BZ
)	
v.)	
)	ORDER TO SHOW CAUSE
JO ANNE B. BARNHART,)	
Commissioner of Social)	
Security Administration,)	
)	
Defendant(s).)	
)	
_____)	

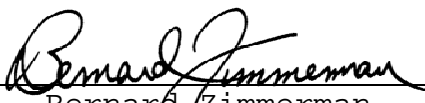
At the status conference held on Monday, June 19, 2006, the court was told that defendant's position, to which plaintiff agreed, was that notwithstanding plaintiff's expansive pleading, this matter could be resolved under Civil Local Rule 16-5 by review of the administrative record through cross motions for summary judgment.

The court was therefore surprised when the next day defendant filed a motion to dismiss pursuant to Fed. R. Civ. P. 41(b) or alternatively for a more definite statement under Fed. R. Civ. P. 12(e). That motion recognizes this case has been filed pursuant to Civil Local Rule 16-5, and states that

1 it should be submitted on the papers without oral argument.

2 Civil Local Rule 16-5 requires the defendant to file an
3 answer, and the administrative record, within 90 days of
4 receipt of service of the summons and complaint and then
5 provides for cross motions for summary judgment after the
6 record is lodged. Nothing in Civil Local Rule 16-5 appears to
7 provide for motions to dismiss or motions for a more definite
8 statement. Accordingly, defendant is **ORDERED** by **July 5, 2006**
9 to submit authority for the proposition that Civil Local Rule
10 16-5 permits the filing of her motion or otherwise show cause
11 why her motion should not be denied as improvidently filed.

12 Dated: June 22, 2006

13 
14 Bernard Zimmerman
United States Magistrate Judge

15 G:\BZALL\BZCASES\MCCARTHY\ORDER.TO.SHOW.CAUSE.2.wpd
16
17
18
19
20
21
22
23
24
25
26
27
28